In the

Supreme Court of the United States

In Equity

October Term, 1934.

No. _____ ORIGINAL

THE STATE OF NEBRASKA,
Complainant,

VS.

THE STATE OF WYOMING,
Defendant.

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT IN EQUITY

To the Honorable The Chief Justice and The Associate Justices of the Supreme Court of the United States:

The State of Nebraska, one of the States of the Union of the United States of America, appearing in its sovereign capacity by Paul F. Good, its Attorney General, upon direction of Charles W. Bryan, its Governor, respectfully moves the Court for leave to file in this Court its Bill of Complaint against the State of Wyoming; and said complainant herewith presents the Bill of Complaint which it proposes to file.

Complainant respectfully shows unto the Court that, as said proposed Bill of Complaint shows on its face, this complainant alleges that in various and divers ways, the defendant is intentionally and wilfully violating complainant's rights to an equitable division of the waters of The North Platte River, an inter-state non-navigable stream flowing through the territory of defendant and then through the territory of complainant; that defendant is commencing extensive operations upon another large project which, if completed and placed in operation, will result in still greater violations of complainant's rights; that such violations and threatened increase thereof now result and will result in great and irreparable damage to complainant and its citizens and inhabitants; and that complainant prays for injunctive relief against said wrongs and threatened wrongs.

Complainant further shows unto the Court that, as held by this Court in the cases of *State of Wyoming* v. *State of Colorado*, 259 U. S. 419, *State of Connecticut* v. *State of Massachusetts*, 282 U. S. 660, and *State of New Jersey* v. *State of New York*, 283 U. S. 336, each State through whose territory a natural stream flows is entitled to an equitable apportionment of the waters of such stream and this Court will grant relief in the event one state is depriving, or threatening to deprive, another State of its equitable share of such waters.

WHEREFORE, The State of Nebraska prays leave to file its original Bill of Complaint as above stated.

Respectfully submitted,

THE STATE OF NEBRASKA
By PAUL F. GOOD,
Attorney General of the State of Nebraska,
WM. H. WRIGHT,
Assistant Attorney General of the State of Nebraska,
Solicitors for Complainant.

C. G. PERRY,
Of Counsel

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BILL OF COMPLAINT IN EQUITY

To the Honorable The Chief Justice and The Associate Justices of the Supreme Court of the United States:

The State of Nebraska, a State of the Union appearing in its sovereign capacity by its Attorney General upon direction of Charles W. Bryan, its Governor, and with authority of its legislature, by leave of Court files this its Bill of Complaint, and respectfully sets forth:

FIRST

The parties hereto are your complainant, the State of Nebraska, a State of the Union admitted to and exercising equal sovereignty with the original and all other States

of the Union, and the State of Wyoming, a like sovereign and equal State of the Union. This complainant has all of the privileges, rights, and powers, and is under all the duties including the duty of protecting the rights and interests of its citizens, which are possessed or devolved upon any state.

SECOND

The North Platte River is a non-navigable river which has its source in the mountains of Colorado, and drains about eighteen hundred square miles in that state; it crosses the boundary between the states of Colorado and Wyoming at a point approximately one hundred twenty miles west of the eastern boundary of the State of Wyoming, and from the point of its entry into the State of Wyoming it flows in a general northerly direction approximately one hundred sixty miles to Casper, Wyoming, thence approximately fifty-five miles east to Douglas, Wyoming, thence in a south-easterly direction approximately one hundred miles to the Wyoming-Nebraska state line, continuing in the same direction approximately two hundred miles to its confluence with the South Platte River at the City of North Platte, Nebraska, to form the Platte River. From the City of North Platte, Nebraska, the said Platte River so formed by the junction of the said North Platte and South Platte Rivers, flows in a general south-easterly direction approximately one hundred ten miles to the City of Kearney, Nebraska, thence in a general north-easterly direction approximately one hundred fifty miles to the City of Fremont, Nebraska, and thence in a general south-easterly direction sixty miles to the City of Plattsmouth, Nebraska, where it empties into the Missouri River on the

eastern boundary of the State of Nebraska. That a map of such area is attached hereto, made a part hereof and for purposes of identification marked Exhibit A.

THIRD

That the drainage area of the said North Platte River in Wyoming is approximately twenty-two thousand, four hundred (22,400), square miles; and in the State of Nebraska, down to and including the City of Grand Island, Nebraska, approximately thirteen thousand (13,000), square miles. That the said drainage area of the said North Platte River in the State of Nebraska, between the Wyoming-Nebraska state line and the City of Grand Island, Nebraska, is largely arid or semi-arid country possessing fertile soil, which soil requires the artificial application of water to it for the purpose of developing its fruitfulness and which, without such artificial application of water, will produce little or meager crops except in the eastern portion of the area under discussion, where in seasons of exceptional rain fall, crops of high water requirement will grow even if watered only by the natural rain fall. That the soil and climatic conditions of such area are peculiarly adapted to crops of high water requirement, which crops are the most valuable and economically the most useful for the said area. That the mean annual rain fall in such area varies from fifteen (15) inches at the western extremity of the area, namely the State line between Wyoming and Nebraska; to twenty-seven (27) inches at the City of Grand Island, said variation being a gradual increase as one passes from west to east. That in any normal year the period of least rainfall in said area is in the months of July, August and September.

during which time there is very great need of water for the crops grown on the land in said area. This complainant avers that even in the eastern portion of the area under consideration, the soil requires the artificial application of water for the purpose of developing its full fertility and productiveness, and that in years of normal rain fall or less, farming operations are precarious and hazardous unless the natural rain fall is supplemented by the artificial application of water, and except in the eastern portion of the area under consideration, it is practically impossible to produce any crops without a supply of water for irrigating purposes. That in the drainage basin of the said Platte and North Platte Rivers, between the said state line dividing the State of Nebraska from the State of Wyoming, and the said City of Grand Island, Nebraska, there are no tributaries of the said North Platte and Platte Rivers supplying any substantial amount of water, and the only means of supplementing the rain fall (the natural supply of water) is by irrigation from the said Platte and North Platte Rivers, and chiefly from water originating in the upper part of the North Platte Basin in Colorado and Wyoming.

FOURTH

That commencing in the year 1882, and increasingly as the said area under consideration became settled by inhabitants, the waters of the said Platte and North Platte Rivers have been diverted by appropriately constructed irrigation systems diverting for the purposes of irrigation the waters naturally flowing in said streams and conducting said waters to the arable lands within said drainage basin where feasible, and applying said waters to such lands for

the purpose of making them fruitful. That as the practicability and desirability of irrigation became proved and as the engineering art progressed, and as capital became available for that purpose, irrigation projects in Nebraska were developed which diverted waters from said streams and put the same to beneficial uses upon the lands in said area so that at the present time approximately six hundred fifty thousand (650,000) acres of land in the State of Nebraska have as appurtenant to them water rights from the waters of the said Platte and North Platte Rivers, and which would, but for the wrongful acts of defendant hereinafter complained of, receive annually and put to beneficial uses more than 1,500,000 acre feet of water, diverted from the said rivers. (An acre foot being the quantity of water which will cover one acre of area one foot deep.) That the said lands so entitled to water rights in the said Platte and North Platte Rivers are dependent almost entirely upon the waters of the said rivers and when water cannot be delivered to them from the said rivers, said lands are almost wholly unproductive, and the labor and seed expended upon them is completely wasted and lost to the person farming such lands so that for such season the farming venture is almost an entire loss and waste for the farmer.

FIFTH

That the lands so irrigated from the North Platte and Platte Rivers in Nebraska lie almost entirely in Scotts Bluff, Morrill, Garden, Keith, Lincoln, Dawson and Buffalo Counties, Nebraska, and that the agricultural developments based upon irrigation are and for more than forty-five years have been practically the sole basis of all wealth in said

counties, and that practically the entire population of said counties is dependent directly or indirectly upon the production of crops by irrigation for its means of subsistence. That the said above described area has increased in population since the year 1885 from approximately thirty thousand (30,000) people to approximately one hundred twenty thousand (120,000), people at the present time. That the value of all property in said area assessed for taxation purposes has increased from $32,500,000.00 in 1885 to $152,475,753.00 at the present time. That the assessed value of farm lands in said area has increased from $8,222,625.00 in 1885 to $75,332,479.00 at the present time. That the value of the irrigated lands in said area is approximately $52,000,000.00. That the value of all crops grown in said area has increased from $1,476,287.54 in 1885 to $34,170.000.00 in 1929. That the production of crops in said area, compared with the year 1885, is as follows:

	1885	*1930*
Corn (bushels)	2,796,403	20,148,955
Wheat (bushels)	476,580	7,896,808
Sugar Beets (tons)	None	1,225,000
Alfalfa (tons)	60,000	443,977
Hay (tons)	50,000	315,899
Potatoes (bushels)	207,386	2,398,659
Oats (bushels)	680,379	3,885,858
Barley (bushels)	99,980	4,395,074
Rye (bushels)	21,900	709,597

That by reason of the development of the farm lands in the said area by irrigation, the said valley has been brought to a high state of civilization wherein the various arts, crafts, and sciences have flourished; schools have been built; other public buildings have been erected; thousands of farm homes have been made wherein tens of thousands

of farmers have lived a peaceful, happy, prosperous, and contented life. That in said valley many cities, towns, and villages have been built with population ranging as high as twelve thousand (12,000) in North Platte, eleven thousand (11,000) in Scottsbluff-Gering, eight thousand five hundred (8,500) in Kearney, and eighteen thousand (18,000) in Grand Island.

That seven beet sugar factories have been built in Nebraska in said North Platte and Platte Valley representing a capital investment of four million dollars ($4,000,000.00), and the said factories annually purchase from beet growers of said valley in Nebraska one million, two hundred twenty-five thousand (1,225,000), tons of sugar beets for which they pay annually to said beet growers the sum of seven million dollars ($7,000,000). That the operation of said factories is entirely dependent upon a supply of sugar beets grown in said valley, which supply can only be made available by the use of water for the purpose of irrigation.

That the value of irrigation works constructed in Nebraka (including canals, laterals, diversion works, etc.), for the purpose of irrigating the lands described herein from the Platte and North Platte Rivers is approximately fifty million dollars ($50,000,000.00).

That there is a large territory adjacent to the counties above mentioned, and to the irrigated lands therein, which territory partly lies within and partly without the above mentioned counties, which territory is used for grazing and ranching country. That economically said ranching is largely dependent for its successful operation upon the

crops grown in said irrigated section, and it would be a great damage and detriment to such ranching country if the lands now being irrigated were to become waste and not susceptible to growing crops.

That this complainant derives a large part of its revenues, necessary to it in order to carry on its governmental functions, from taxes levied upon properties in the above described irrigated area, both from lands irrigable and irrigated, and also upon property directly or indirectly dependent for its value upon the production of crops by irrigation.

That the failure and depletion of the water supply in the North Platte and Platte Rivers for irrigation purposes would work economic disaster to the area described herein, and all the people and communities located therein, making it impossible for said inhabitants to maintain their homes and resulting ultimately in the depopulation and laying waste of the area herein described, and depriving this complainant of a large amount of revenue from taxation.

SIXTH

That although in the early development of the common law in the State of Nebraska, the doctrine of riparian rights was recognized as the basis of the correlative rights of individuals and corporations in the flowing waters of the State of Nebraska, by a series of legislative enactments and judicial decisions the doctrine of appropriation has become recognized and applied so that for a period of more than fifty years last past, in the area under consideration, namely the North Platte and Platte River counties from the City of Grand Island, Nebraska, west, it has been

legally recognized that the waters of the North Platte and Platte Rivers have been subject to appropriation and irrigation rights upon the principle that priority of time bestows priority of rights. That in the year 1889, at the twenty-first legislative assembly of the State of Nebraska, said legislature adopted laws authorizing and regulating the appropriation of water from the naturally flowing streams of the State of Nebraska, and providing as follows, to-wit:

> "As between appropriations, the one first in time is first in right."

That in the year 1895, at the twenty-fourth session of the legislative asembly of the State of Nebraska, said legislative assembly adopted a complete and comprehensive system of laws regulating appropriations of water of natural streams, and lakes, for irrigation purposes, which laws with certain relatively unimportant modifications, changes, and developments, have remained in force in the State of Nebraska at all times since their adoption in the year 1895. That among other provisions of such 1895 legislation were the following provisions, to-wit:

> Sec. 42. "The water of every natural stream not heretofore appropriated, within the state of Nebraska, is hereby declared to be the property of the public, and is dedicated to the use of the people of the state, subject to appropriation as heretofore provided."

> Sec. 43. "The right to divert unappropriated waters of every natural stream for beneficial use shall never be denied. Priority of appropriation shall give the better right as between those using the water for the same purposes but when the waters of any natural stream are not sufficient for the use of all those desiring the use of the same, those using the water for

domestic purposes shall have the preference over those claiming for any other purpose, and those using the water for agricultural purposes shall have the preference over those using the same for manufacturing purposes."

That such sections in substantially the same language have been a portion of the statutes of the State of Nebraska ever since their adoption in 1895, and in the year 1920 when the State of Nebraska adopted a new constitution, such provisions were in substance embodied therein and now appear as sections 4, 5, and 6, Article XV of said constitution, in the following language:

Section 4. "The necessity of water for domestic use and for irrigation purposes in the State of Nebraska is hereby declared to be a natural want."

Section 5. "The use of the water of every natural stream within the State of Nebraska is hereby dedicated to the people of the state for beneficial purposes, subject to the provisions of the following section."

Section 6. "The right to divert unappropriated waters of every natural stream for beneficial use shall never be denied except when such denial is demanded by the public interest. Priority of appropriation shall give the better right as between those using the water for the same purpose, but when the waters of any natural stream are not sufficient for the use of all those desiring to use the same, those using the water for domestic purposes shall have preference over those claiming it for any other purpose, and those using the water for agricultural purposes shall have the preference over those using the same for manufacturing purposes. Provided, no inferior right to the use of the waters of this state shall be acquired by a superior right without just compensation therefor to the inferior user."

That the said legislation of 1895 was in general copied after the provisions of the statutes of the State of Wyoming upon the same subject; and that the doctrine that the waters of natural streams are owned by the state and dedicated to the use of the people, and the doctrine of appropriation of waters for beneficial uses including irrigation is and has been recognized and enforced upon the public streams of the States of Nebraska and Wyoming including the North Platte and Platte Rivers, for more than forty years. That prior to such 1895 legislation, such doctrine was for all practical purposes in force in said area, and that said legislation of 1895, ratifying, recognizing, and authorizing the appropriations previously made, made proper and careful provisions for appropriations to be made subsequent to said date as well as providing for the ascertainment and adjudication of water rights previously acquired by appropriation. That since 1895, all permits for the appropriations of water for irrigation purposes in the naturally flowing streams of Nebraska, including the North Platte and Platte Rivers, have been made through the administrative officers of the State of Nebraska, and such administrative officers have been charged with and have exercised the duties of administering such appropriations in accordance with the doctrine of priority of appropriation.

SEVENTH

That such doctrine of appropriation as recognized and in force both in the states of Wyoming and Nebraska, has at all times been based upon the principle that he who first initiated an appropriation, diverted the waters and applied the same to beneficial use should have a prior right to the same as of the time when the project was initiated

and the work was first commenced and diligently carried to completion. That such doctrine was legally recognized and applied both in the states of Wyoming and Nebraska prior to the date of said 1895 legislation in Nebraska, and prior to the date of the Wyoming legislation upon which the said 1895 legislation was modeled, namely 1890. That such legislation in each state has at all times provided and still does provide for state administration of water, both by obtaining a state permit for diversion, and by administration and regulation of such diversions through state officers.

EIGHTH

That in the year 1902 the Congress of the United States passed an act known as the "Reclamation Act," which provided for the construction in various portions of the United States, including the State of Wyoming, of reservoirs for the purpose of storage of waters otherwise being wasted and not put to beneficial use, such storage being for the purpose of making available during the crop growing season, waters which would otherwise be allowed to pass down the channel of the stream during the season when no crops were growing, and which waters could not be directly applied to any beneficial use upon agricultural lands. That acting under the authority of such Reclamation Act, the Secretary of the Interior of the United States, prepared plans for a project now known as "The North Platte Project" and pursuant to such plans made application to the state engineer of the State of Wyoming on the 6th day of December, 1904, for permission to construct reservoirs, for the purpose of storage of water of the North Platte River, which application was granted by the said state engineer, and which was assigned a

priority date of the 6th day of December, 1904. That such applications included the right to store in the Pathfinder Reservoir at a point forty miles southwest of Casper, Wyoming, one million seventy thousand (1,070,000) acre feet and that said Pathfinder Reservoir was constructed and completed in the month of June, 1909, immediately placed in operation and at all times has been operated by the Bureau of Reclamation of the United States Department of Interior under the authority and subject to the irrigation laws of the defendant State of Wyoming. That a supplemental and regulating reservoir for the purpose of properly administering the storage water so appropriated was subsequently built and completed in the month of July, 1927, at Guernsey, Wyoming, at a point approximately fifty miles southeast of Douglas, Wyoming, which provided in addition to its original purposes, storage for approximately seventy-one thousand (71,000) acre feet of water. That ever since said date said Guernsey Reservoir has also been operated for the purposes above named, including storage of waters for the purpose of ultimately using the same for irrigation.

That there are also other storage and regulating reservoirs in said system with a total storage capacity of approximately 77,000 acre feet.

That such storage water was appropriated and used for the purpose of reclaiming and rendering productive large areas of land which would otherwise be arid and unproductive, and cannals were constructed for the purpose of carrying such storage waters to the lands so to be reclaimed. That such Pathfinder and Guernsey storage reservoirs were created by constructing dams across the main channel of said rivers, and using said channel and the natural contours of the

land on either side of the river bed as the reservoir. That the natural channel of the stream has at all times been used for the purpose of conducting storage water when released, to the diversion points on the river from which the canals commenced diverting, to the points where the waters would be of beneficial use, and in conducting such storage waters to such points of diversion such storage waters have at all times been mingled with the natural flow of said streams, the quantity to which any diversion canal was entitled being determined by bookkeeping based upon measurements of the quantity released and measurements of the flow. That the canals so supplied with storage water from such reclamation projects were and are entitled by reason of appropriation of waters and priorities granted by the respective states, also to certain rights in the direct flow of said streams; and under an amendment to the United States Reclamation Act passed in the year 1911, and known as the Warren Act (Act of February 21, 1911, Ch. 141, secs. 1, 2, & 3, U. S. C. A. Title 43, Sections 523, 524, 525), the United States Bureau of Reclamation has entered into contracts with irrigation projects of water with earlier priorities to supplement their direct flow rights by storage water in consideration of such projects paying to the United States Government certain stipulated sums representing a computation of the approximate proportion of the cost of construction and maintenance of such reservoirs, canals, etc.

NINTH

That the purpose of such storage as declared by said act of Congress and as declared in the requests filed for permit to store, were for the purpose of impounding and making

available waters not otherwise needed for direct irrigation, and the preservation of such waters until such time as they were needed. That in most years, commencing in the month of May, the waters directly and naturally flowing in the said stream are needed for the purpose of watering the crops being grown upon lands entitled to early priorities, and from said date until approximately the middle or end of the month of October, all of such direct and natural flow is and has been required for the purpose of supplying such lands with water. That when such waters in the natural flow of said stream are allocated in accordance with the doctrine of priority, as early as the middle of April the natural flow of the waters of such streams are usually required for the purpose of affording to lands irrigation with direct flow. That all of the acts of the United States Bureau of Reclamation in operating said reservoirs, in impounding waters, and filling the same, and in releasing such waters, are subject to the authority of the State of Wyoming, defendant herein, and that said defendant State of Wyoming and its officers are charged with the duty of administering such waters fairly and impartially and of requiring that water should not be taken for storage when needed for direct flow appropriators, and are charged with the duty of preventing appropriators with junior rights from taking water which is required by appropriators with senior rights. That such duties extend to the duty of controlling appropriators whose appropriations are made and taken under the authority of the State of Wyoming from encroaching upon the water rights of Nebraska appropriators whose rights are prior to Wyoming appropriators, and from diminishing the flow of said streams so that such Nebraska prior appropriators are unable to obtain the waters included within their appropriations. That with

the authority of the defendant State of Wyoming, the officers in charge of such dams and reservoirs have continually obstructed the streams and held back waters for storage purposes thereby diminishing the direct flow and depriving Nebraska water appropriators, both senior and junior in date to such storage appropriation, from obtaining direct flow water to which they are entitled by interstate common law. That such illegal and wrongful impounding of water for storage purposes amounts and has amounted in each year for the past several years to many thousands of acre feet, in some years running as high as fifty or sixty thousand acre feet valued at $1,800,000. That such waters, when released, are not made available to such direct flow appropriators, but are reserved and kept entirely for the benefit of lands watered by canals included in the original plans of the said North Platte project, and also for the benefit of holders of Warren Act contracts. That this complainant, by its duly constituted officers, has repeatedly and times without number protested vigorously, by telephone, by telegram, verbally, and by letter not only to the defendant, the State of Wyoming and its officers charged with the duty of administering the waters of the North Platte River in the State of Wyoming, as hereinbefore described, but also to the administrative officers of the United States Bureau of Reclamation and to the Washington office of the United States Bureau of Reclamation; but that said defendant, the State of Wyoming, and each and every one of such officers to whom such protests have been made have failed, neglected, and refused to aid this complainant, but on the contrary said officers, and said State of Wyoming through its duly authorized and constituted officers, have declared their intention to administer the waters of the North Platte River in the State of

Wyoming without regard to the rights and other claims of this complainant and its appropriators. That unless restrained by this court, the defendant will continue to permit, aid, and abet its appropriator, the United States Bureau of Reclamation, in its wrongful, illegal and unjustifiable impounding of direct flow water to which your complainant's appropriators are entitled, thereby depriving Nebraska appropriators of many thousands of acre feet of water in each year hereafter.

TENTH

That in accordance with their respective laws, the complainant State of Nebraska and defendant State of Wyoming have from time to time issued permits and adjudicated priorities for the diversion of water from the Platte and North Platte rivers, applying in such issuance of permits and such adjudications substantially the same rule, namely, that priority in time of first appropriation gives priority of right; and the further rule that when an irrigation project is completed its priority date relates back to the date when public notice was first given and filing was first made showing an intention to appropriate for such purpose, provided such notice and filing was, within a reasonable time, followed by actual construction promptly commenced and diligently carried to completion, including the actual application of the water to beneficial use. That such priority dates are and have been for many years last past, matters of public record in the offices of the State Engineers of the complainant and defendant respectively, and have at all times been available for inspection by any person interested therein.

That this court, in controversies between states as to the waters of interstate streams, has declared the rule of interstate common law to be that each of such states is entitled to an equitable apportionment of the waters of such streams; and in the case of two states, each recognizing and applying the rules of appropriation of waters for irrigation purposes, this court has held in the case of *Wyoming* v. *Colorado*, 259 U. S. 419, that in such apportionment, the respective priorities in each state will govern.

That the complainant, State of Nebraska, by interstate common law, is entitled to an equitable division and apportionment of the waters of the North Platte River, in order that (at all times having due regard to priorities of Wyoming water rights which are senior to the priorities of Nebraska water rights), complainant may enable its appropriators to enjoy their water rights without interference by junior appropriators, whether in Wyoming or Nebraska.

That the flow of the North Platte River varies from year to year, in most years being inadequate to supply the demands for the entire irrigating season of all appropriators of direct flow waters in both states, and in some years such inadequacy requires in the due and lawful administration of the river, the denial of all waters to junior appropriators of more recent dates. That the date of priority which would entitle any appropriator in either state to water from said stream varies from year to year and from month to month in any year according to the quantity of water flowing in the river at that particular time; but complainant alleges that careful measurements of the flow of said stream are continuously made at various

points along its course, and the quantity of water available for diversion is at all times known to the defendant State of Wyoming, and the priority dates of all appropriators in both states are available and open to said defendant so that at all times said defendant the State of Wyoming has known or in the exercise of reasonable diligence would have known the quantity of water which it should allow to cross the state line.

Notwithstanding said facts, the defendant the State of Wyoming, in the administration of the waters of the North Platte River which pass through its territory, has for many years last past, continuously and repeatedly, violated the rule of priority and deprived the complainant the State of Nebraska of the water to which it is equitably entitled by diverting said waters for use upon lands having junior rights, when said waters are needed for the purpose of irrigating lands in Nebraska having a senior priority; and has wrongfully aided, assisted, and abetted such junior appropriators in their wrongful and unlawful acts of taking waters which are equitably the property of the State of Nebraska, thereby depriving this complainant of its use of the same upon Nebraska lands having prior and senior appropriation rights.

That this complainant, by its duly authorized officers, has repeatedly complained to the defendant and to the officers of the defendant, State of Wyoming, charged with the duty of administering the waters of the North Platte River, urging upon the defendant the necessity and duty resting upon it of recognizing and respecting the equitable rights of the State of Nebraska and its appropriators in the waters of the North Platte River, informing said de-

fendant and its officers of the priority dates which should be respected at the time of such complaint, in order to give Nebraska its equitable apportionment of the waters of said North Platte River, and offering to cooperate with defendant in administering such waters and in affording information necessary in the proper administration of such waters. That notwithstanding such protests and complaints, said defendant, through its duly authorized administrative officers has expressly declared its intention of permitting any Wyoming appropriator to divert and use waters of the North Platte River regardless of the fact that many such appropriators are junior and inferior in right to the State of Nebraska and its appropriators, and said defendant through its duly authorized administrative officers has expressly declared to the complainant and its duly authorized officers that it will not recognize any Nebraska priorities nor will it require any appropriators in the State of Wyoming to close their headgates for the purpose of enabling water to reach the State of Nebraska, even though such Wyoming appropriations are many years junior and inferior to those of the State of Nebraska and to those of Nebraska appropriators, who, by reason of such diversions of such Wyoming appropriators, are being required to go without water and to see their crops ruined for lack of water. That the administrative interpretation and the practical interpretation by the defendant State of Wyoming and its duly authorized administrative officers, of the irrigation laws of Wyoming, is such that unless restrained by the order of this court, said defendant and its administrative officers will permit Wyoming appropriators to take water regardless of priorities existing in the State of Nebraska, and this complainant therefore avers that the defendant, State of Wyoming, is intentional-

ly violating the rights of this complainant to an equitable distribution of the waters of the North Platte River, and is intentionally appropriating to itself and for the benefit of its citizens, waters which belong to this complainant in justice and equity, and that the diversions so wrongfully and illegally made by the defendant State of Wyoming as herein in this paragraph alleged, have amounted during the past several years to an average of many thousand acre feet; in some years to as much as fifty or sixty thousand acre feet; and that illegal diversions and appropriations will, unless restrained by this court, continue in increasing degree to the great damage and detriment of this complainant.

That this complainant asks this court to establish a schedule of priorities in accordance with the respective adjudications of the complainant and the defendant, and that defendant be required, in permitting diversions of water from the North Platte River in Wyoming, at all times to prevent such diversions as will interfere with Nebraska priorities because of the flow of the river at any particular time.

ELEVENTH

That during the last eighteen months and commencing in approximately March of 1933, there has been developed by the defendant State of Wyoming and the United States Bureau of Reclamation, plans for further projects known as the Casper-Alcova and Seminoe Reservoir projects which have for their purposes the irrigation of approximately eighty-five thousand (85,000) acres of land in the North Platte drainage basin, using therefor exclusively waters of the North Platte River, such acreage area lying west,

northwest and southwest of the City of Casper, Wyoming. That for the purpose of creating a supply of water for the irrigation of such acreage said United States Bureau of Reclamation and the defendant State of Wyoming plan to, and will unless restrained by this court, construct a dam across the channel of the North Platte River at a point approximately twenty miles south of the Pathfinder Dam, to create a channel reservoir known as the Seminoe Reservoir, with a capacity of one million (1,000,000) acre feet, and another supplementary and regulating reservoir lying in the channel at the point known as Alcova, approximately twelve miles below the Pathfinder Reservoir, such Alcova Reservoir having a capacity of approximately one hundred sixty-five thousand (165,000) acre feet.

That the waters which will be impounded in said Alcova reservoir will be "dead storage" for the reason that said quantity of water must be retained in said reservoir at all times during the irrigating season, while there is need for diversion of any water to the lands to be irrigated, since the diversion point of the proposed canal is so high that water can be diverted through it only when said reservoir is entirely filled.

That whereas the present storage reservoirs on said North Platte River in Wyoming now absorb approximately seventy per cent of the average flow of said river, said Seminoe and Alcova reservoirs will double the storage capacity of reservoirs on said river, and will absorb not only all the normal flow of said river in any year, but also all surplus which may pass down said river in any year of extraordinary flood.

That the said defendant State of Wyoming has alloted to the Casper-Alcova project a permit to store water in such quantities and in addition, has alloted to such project direct flow diversion and irrigation rights for the full amount of said eighty-five thousand (85,000) acres of land, with a priority of December 6th, 1904. That such direct flow rights will require the use during the irrigation season of approximately two hundred fifty thousand acre feet of water. That in truth and in fact the priority date alloted by the defendant, the State of Wyoming, to the said Casper-Alcova project is wholly and entirely fictitious; that the true priority date of any appropriation is in truth and in fact as above alleged, and in truth and in fact work did not commence upon said project until the month of March, 1934, and that the priority date to which such project would be entitled cannot be earlier than March of 1934. That between December 6th, 1904, and March of 1934, appropriations of waters of the North Platte and Platte Rivers for approximately sixty-nine thousand (69,000) acres of land in the State of Nebraska, have been allowed and developed with priorities properly assigned to them, and that such Nebraska projects are entitled to priorities over the said Casper-Alcova project.

That said Nebraska appropriations represent land actually placed under cultivation by the application of water to beneficial use; and pursuant to such appropriations and in reliance thereon large investments have been made in the diversion works, canals and laterals for the purpose of conducting the waters to said lands, and extensive and valuable improvements have been made on said lands so that it would be unjust and inequitable to create priorities senior to such appropriations and defendant is estopped to assert any such priorities.

That for many years, the appropriation rights both in Wyoming and Nebraska which are entitled to use waters for direct application to the land, and which have been in actual successful operation applying such waters to direct beneficial use, have absorbed all of the direct flow available in the irrigating season in normal years, leaving for such Casper-Alcova and Seminoe projects, if properly administered according to priorities, only such extraordinary flood waters as may pass down the channel of the North Platte River in unusual seasons; and for storage only the water not needed in the storage season for filling the Pathfinder and Guernsey Reservoirs.

That in any event, regardless of the date of priority assigned to the said Casper-Alcova project, the defendant, the State of Wyoming, pursuant to its laws and the administrative interpretation thereof, as hereinbefore alleged, will at all times, unless restrained by this court, allow the diversion and appropriation of the waters of the North Platte River, both for the storage and for the direct flow rights upon said Casper-Alcova and Seminoe projects, regardless of any priorities existing in the State of Nebraska, and respecting only such priorities as have been alloted by the authorities of the State of Wyoming. That the amount of water required for said storage and direct flow rights hereinbefore alleged in connection with the Casper-Alcova and Seminoe projects will absorb all waters flowing at any time of the year and in any year down to the point of diversion at Alcova, Wyoming, and will leave no water flowing past such point except such as the United States Bureau of Reclamation may be able to induce the State of Wyoming to release for the purpose of filling the reservoir at Guernsey, Wyoming. That the development of the

Casper-Alcova, Seminoe projects, as planned and threatened by the defendant State of Wyoming and by the United States Bureau of Reclamation will completely exhaust all of the waters of the North Platte River above the state line between the State of Wyoming and the State of Nebraska, except for such small quantities of water as may flow into the stream by way of accretion between the point of Alcova and Guernsey; and as complainant is informed and verily believes, all of such accretions will be used for the purpose of filling the Guernsey reservoir, and all of the accretions below Guernsey and between Guernsey and the state line will be used by Wyoming junior appropriators, leaving practically no water flowing across the state line into the State of Nebraska. That such plans of the defendant State of Wyoming and the threatened acts of the defendant and of the appropriators acting under and by virtue of its authority, will completely ruin the large and prosperous area in the State of Nebraska hereinbefore described, driving thousands of people from their homes; depriving thousands of people of the fruits of their investments and of the accumulations of their life time; and will deprive the State of Nebraska and thousands of its citizens of their property without due process of law, and will make desolate a region of the State of Nebraska at present a prosperous and happy series of communities.

TWELFTH

That the land in Nebraska which is at present in cultivation by the use of water for irrigation purposes is fertile and highly productive, having been developed to a high state of cultivation; and many valuable improvements have been erected upon said farms, still further increasing their

usefulness; and making it possible to cultivate and store the crops grown on said lands in the most modern and efficient manner. That the lands near Casper in Wyoming which the defendant proposes to reclaim by the Casper-Alcova and Seminoe projects are waste lands fit only for grazing and with little or no prospect of usefulness for agricultural purposes, and can never be brought to the stage of usefulness of the said Nebraska lands. That the cost of said Casper-Alcova and Seminoe projects must be paid largely out of the land reclaimed, and that such cost so to be charged to such land will be not less than $80.00 per acre, to be repaid at the rate of $2.00 per acre per year for a period of forty years plus interest on the deferred installments, and it is doubtful whether the land will ever produce sufficient to make such payments and in addition to pay annual operation and maintenance charges; and that it is an inequitable and unjust distribution of the waters of said river to take them from established and actually valuable districts (thereby destroying the economic value of such districts), and to give them to a speculative and doubtful area, where their value would be wholly speculative, with a reasonable prospect of complete waste of such waters.

THIRTEENTH

That included in the lands operating under the canals constructed by the United States Reclamation Bureau (as herein alleged in the Eighth paragraph hereof), for the purpose of conducting the storage waters impounded in the Pathfinder and Guernsey reservoirs, are many acres of Nebraska lands. That such lands, by reason of the priorities established for such Pathfinder and Guernsey reser-

voirs, have storage water rights of a priority of December 6, 1904, and that such lands are chiefly dependent upon such storage for their water. That other Nebraska irrigation districts have acquired rights in said reservoirs and the storage waters therein by means of "Warren Act contracts" as alleged in the Eighth paragraph hereof, and are dependent largely upon such storage water for a supply of water supplementing their direct flow rights. That even if the full storage capacity created by said "North Platte Project" could be utilized and even when such reservoirs are completely filled, there is insufficient storage water to supply the needs of all lands entitled to such storage water under the two classes of contracts herein described. That the acts of defendant in assigning to said Casper-Alcova project a priority date equal to that of the Pathfinder and Guernsey reservoirs directly diminishes the water available for storage in said reservoirs for the reason that there is not now any surplus of water available for storage in any normal year over and above the amount necessary to fill both such reservoirs, and in years when the flow is less than normal, there is insufficient to fill said reservoirs. The said Casper-Alcova project will create an additional demand upon said river for two hundred fifty thousand (250,000), acre feet direct flow annually and one hundred sixty-five thousand (165,000), acre feet of storage.

That defendant threatens to and will, unless restrained by this court, divide the available water proportionately between said Casper-Alcova project and the said Pathfinder and Guernsey reservoirs, thereby irreparably damaging the land of Nebraska entitled to storage waters from said Pathfinder and Guernsey reservoirs, so that, except in years of very exceptionally great flow of waters

in the North Platte River, such Nebraska lands will be rendered largely unproductive, with resulting damage as hereinbefore alleged.

FOURTEENTH

That the wrongs complained of herein have been and still are matters of acute controversy between appropriators of water in Nebraska and Wyoming, respectively; that many suits in equity and at law are threatened for the purpose of obtaining relief as between and among such appropriators, which will result in a large volume of litigation, whereby still greater confusion will result in the administration of the waters of said river. That this court should take jurisdiction of said controversy in order to avoid a multiplicity of suits and in order that full, complete, and equitable relief to all parties may be afforded in one action.

FIFTEENTH

That your complainant has no adequate remedy at law in the premises nor any remedy in any tribunal save and except by this suit in equity before this honorable court.

WHEREFORE, complainant prays that this court may issue its subpoena directed to the State of Wyoming and its Governor and Attorney General, directing that appearance be made by the said defendant and by the said Governor and Attorney General of the State of Wyoming before this court, at a time to be fixed by said subpoena, and requiring said defendant to answer this bill of complaint; that upon a final hearing in this cause, this court find and determine the equitable shares of the waters of the

North Platte River to which this complainant is entitled, and the respective priorities of the various appropriators of such waters in Wyoming and Nebraska; that the defendant be enjoined and restrained from permitting the wrongful impounding of water for storage purposes hereinbefore complained of; that said defendant be enjoined and restrained from diverting and permitting the diversion to Wyoming junior appropriators of waters to the detriment of Nebraska senior appropriators; that this court fix and determine the priority of the Casper-Alcova and Seminoe Reservoir projects hereinbefore referred to in their relation to such Nebraska appropriators as have appropriations upon said North Platte and Platte Rivers; that the defendant be enjoined from permitting the impounding of any waters for storage in any reservoir at any time when said waters are needed for direct flow appropriators or in any event when said waters are needed by appropriators whose rights are senior to the priority date of such reservoir; that the said defendant be by order of this court, required to permit the waters of the North Platte River to reach the state line between Nebraska and Wyoming in such quantity as will afford to Nebraska its equitable apportionment of the waters of the North Platte River, and for that purpose that the defendant be required to close down and to prevent the appropriation in Wyoming by its appropriators of waters to the detriment of the right of Nebraska to its equitable apportionment of the waters of the North Platte River as determined by this court.

Complainant further prays for such other, further, and different relief as to the Court may seem just and equitable.

THE STATE OF NEBRASKA,
Complainant

By PAUL F. GOOD,
Attorney General of the
State of Nebraska,
WM. H. WRIGHT,
Assistant Attorney General of
the State of Nebraska,
Solicitors for Complainant.

C. G. PERRY,
Of Counsel

THE STATE OF NEBRASKA }
COUNTY OF LANCASTER } ss.

PAUL F. GOOD, being first duly sworn, upon his oath, according to law, deposes and says: That he is the Attorney General of the State of Nebraska, and as such at the direction and upon the request of the Governor of said State, and as authorized by the Act of the Legislature of said State, exhibits the foregoing bill of complaint; that he has read the said bill of complaint, and that the facts therein set forth, saving and excepting alone those averred on information and belief, are true; and that as to the facts therein alleged as upon information and belief, affiant is credibly informed and verily believes that the said facts are true.

PAUL F. GOOD

Subscribed in my presence and sworn to before me this 1st day of October, A. D. 1934.

My commission expires August 6, 1940.

DOROTHY E. MOORE,
Notary Public.

(NOTARIAL SEAL)

NOR
C

MISSOURI RIVER BASIN

LARAMIE RIVER BASIN

SOUTH PLATTE RIVER BASIN

COLORADO RIVER BASIN

CONTINENTAL DIVIDE

WYOMING

COLORADO

NEBRASKA

RAWLINS

CHEYENNE

ALLIANCE

BRIDGEPORT

KEY MAP
NORTH PLATTE RIVER BASIN

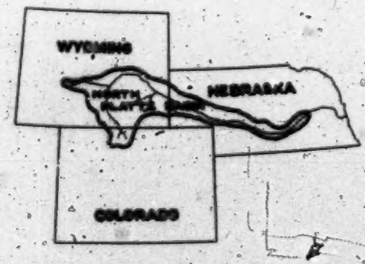


Exhibit (A)

NORTH PLATTE RIVER BASIN

COLORADO WYOMING AND NEBRASKA

STATE OF NEBRASKA

DEPARTMENT OF ROADS & IRRIGATION

BUREAU OF IRRIGATION WATER POWER & DRAINAGE

A. T. LOBDELL - ACTING STATE ENGINEER

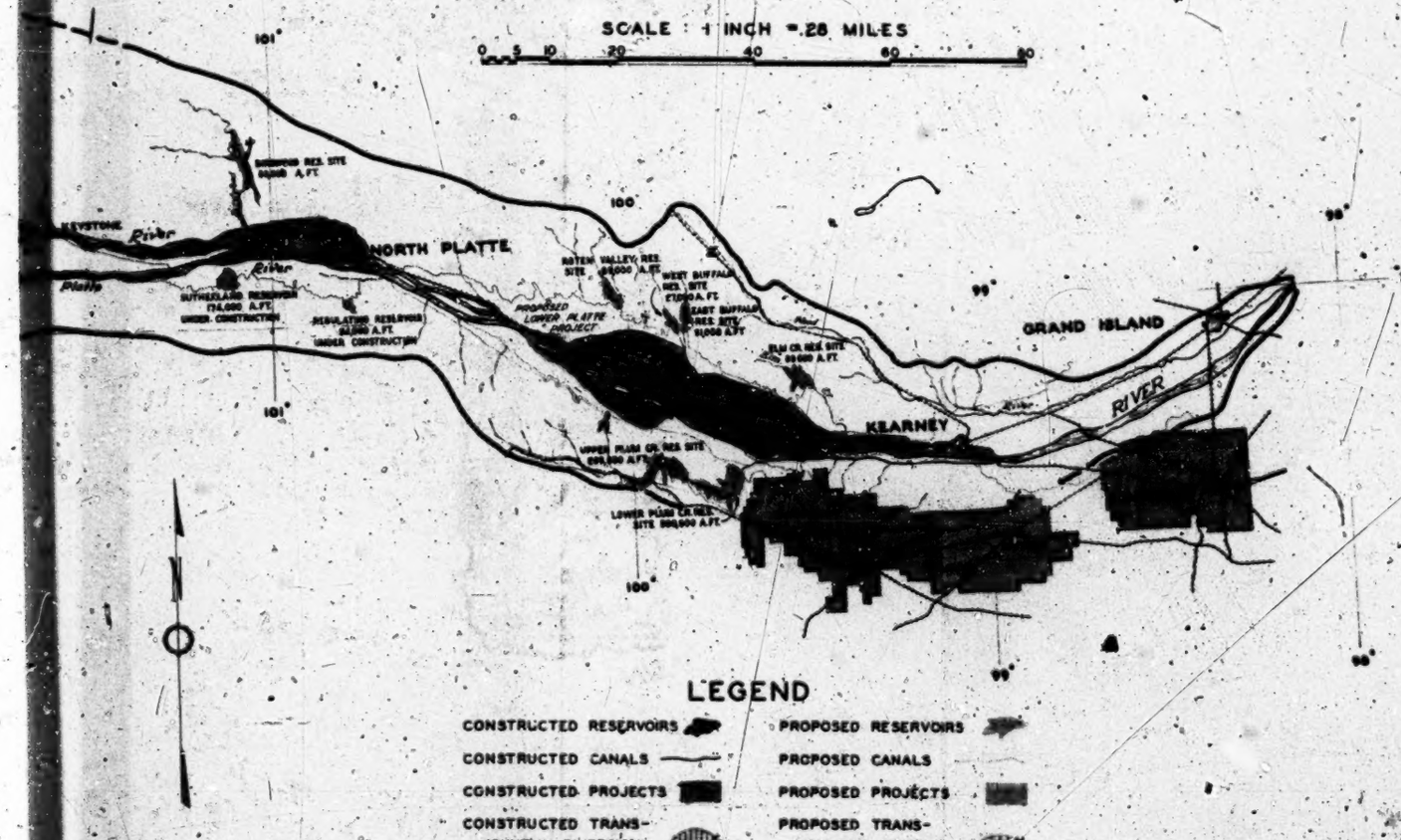
SEPTEMBER 20 1934

REDRAFT OF 1926 MAP BY R. I. MEEKER - CONSULTING ENGINEER

LOCATION OF STREAMS AND BOUNDARY OF BASIN
COMPILED FROM STATE BASE MAPS U. S. GEOLOGICAL SURVEY 1:500,000

SCALE : 1 INCH = 28 MILES

0 5 10 20 40 60 80



LEGEND

CONSTRUCTED RESERVOIRS	PROPOSED RESERVOIRS
CONSTRUCTED CANALS	PROPOSED CANALS
CONSTRUCTED PROJECTS	PROPOSED PROJECTS
CONSTRUCTED TRANS-MOUNTAIN DIVERSION	PROPOSED TRANS-MOUNTAIN DIVERSION